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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,282	11/23/2001	James Clement Martinec		8828

7590 02/24/2006

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15922 PILGRIM CR.  
HUNTINGTON BEACH, CA 92647

EXAMINER
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THANH, QUANG D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/994,282

Applicant(s)

MARTINEC, JAMES CLEMENT

Examiner

Quang D. Thanh

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This office action is responsive to the amendment filed on 8/24/05 . As directed by the amendment, claims 1 and 4 have been amended, no claims has been cancelled nor added. Thus, claims 1-4 are presently pending in this application.

### ***Response to Amendment***

2. The amendment filed 8/24/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: on p. 6, paragraph 3, "3. This particular .....using it", "The primary objective... require minimum balance", on . 7, "Another use of this .....and techniques", on p. 8-9, "During use, the body ...the sides (10) of the body", and new figures 4-7; and in claim 1 "the user's lateral body is securely fitted and submerged within the said body massage cylinder apparatus".

3. The original specification filed on 11/23/2001 discloses only "An apparatus used for massaging a person's back by themselves. By laying your back over the cylinder shaped apparatus (Massage Tube) in a horizontal position parallel to the ground and knees bent you slide your body back and forth over the Massage Tube with the use of your legs" and there is no support in the original specification and drawings to show the positioning of hands, feet and knee relative to the floor as shown in newly submitted figures 4-7.

4. Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 101***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention (new matter "the user's lateral body is securely fitted and submerged within the said body massage cylinder apparatus" as discussed above).

6. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not adequately described as set forth in the above objection to the specification. Claims 3-4 are also rejected because they depend on a rejected claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eissmann (DE 4305931 A1) in view of Ryan et al. (6,419,650).

8. Re claim 1, Eissmann discloses a body massage cylinder apparatus 10 (fig. 1-2) comprising: (a) a uni-body apparatus 2 (fig. 1) constructed from a resilient rubber

material (p. 3, lines 19-20) forming a cylinder shape (fig. 1-2) supported by an air chamber 7/12 (filling done by air pump, p. 3, lines 31-36), this massage element 2 is constructed with no separate moveable or removable main components (fig. 1-2); (b) dimensioned such that the user is at an intended height off the ground (fig. 1); (c) dimensioned such that the user is securely fitted and submerged within the body when bi-secting an elongated edge circumference (fig. 1); (d) dimensioned such that the mass and size of the apparatus are sufficient to support the user in a proper position during use (p. 1); and (f) an inflatable means comprising an inlet air valve 13 (opening 13 having a check valve, p. 3, line 36, fig. 1-2) to allow for adjusting the height and firmness by increasing or decreasing air pressure. Eissmann does not disclose ribbed and semi pointed formed surfaces in an alternating pattern that radiates outwards from the circumference. However, Ryan teaches a plurality of projections or nubs 14 arranged in a ribbed pattern that encircles the outer surface of the massage element 12 (fig. 2, col. 4, lines 29-34). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Eissmann's reference, to include the ribbed and semi pointed surfaces, as suggested by Ryan et al., for the purpose of providing acupressure stimulation so as to enhance the back massaging effect (col. 2, lines 15-17).

Regarding various dimensions of vertical height, width and circumference, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device such that it would have a vertical height between 10.0 to 15.0 inches, a width between 24.0 to 26.0 inches, a circumference between 10.0 to

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15.0 inches, and ribbed and semi pointed formed surfaces in an alternating pattern that radiates outwards from the circumference between .25 to .75 inches, for the purpose of accommodating various sizes of different users, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

9. Re claim 2, Eissmann further teaches a rubber material is preformed into a cylinder shaped uni-body element which allows a sufficient air pressure and support (pages 1-3).

10. Re claim 3, the combined references teaches a rubber material is preformed into a cylinder shaped uni-body element with a shell having ribbed formations that would be extending across the entire shell and these ribbed formations are sufficiently spaced and alternate their pattern along the circumference of the apparatus.

11. Re claim 4, Eissmann further teaches the apparatus is constructed in a symmetrical uni-body design which yield a top surface parallel to the ground and a size giving the user optimum balance and control (fig. 1), a proper height off the ground (fig. 1), and capable to modify height and firmness of the apparatus by adjusting the air pressure via the inlet air valve 13 (fig. 1-2).

### ***Response to Arguments***

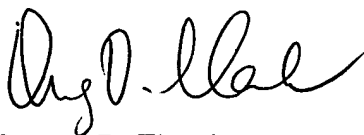
12. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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